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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN DOE

Plaintiff,

v.

KRISTI NOEM, *et al.*

Defendants.

No. 2:25-cv-00633-DGE

Plaintiff's Motion for Preliminary
Injunction

NOTE ON MOTION CALENDAR:
May 1, 2025 @ 9:30 AM

ORAL ARGUMENT REQUESTED

Plaintiff John Doe moves this Court, pursuant to Fed. R. Civ. P. 65(a), to issue a preliminary injunction extending the relief previously granted by the Temporary Restraining Order entered on April 17, 2025 and expiring May 1, 2025. Doc. 16 ("TRO") at 1. Specifically, Plaintiff requests that this injunction preserve his lawful F-1 student status under 8 C.F.R. § 214.2(f), maintain his Student and Exchange Visitor Information System ("SEVIS") record as "active," and prohibit Defendants from enforcing any removal, detention, or transfer arising out of the April 7, 2025 termination of his F-1 student record, I-20, or SEVIS status. TRO at 21-22. As the Court recognized when granting the TRO, Plaintiff "is likely to succeed on the merits"

1 of his claims that Defendants’ abrupt termination of his SEVIS record “violates the
2 Administrative Procedure Act (‘APA’),” that he will suffer irreparable harm without injunctive
3 relief, and that both “the balance of equities and the public interest favor an injunction.” *Id.* at
4 1, 8-9, 21-22.

5 The requested preliminary injunction is prohibitory, not mandatory, because it maintains
6 the last uncontested status quo preceding Defendants’ unlawful termination of Plaintiff’s status.
7 Restoring Plaintiff’s SEVIS record to active is not a final adjudication of the merits.
8 Maintenance of Plaintiff’s active SEVIS status simply ensures the parties remain in their
9 positions prior to the unlawful April 7, 2025 termination. Such relief is warranted under settled
10 law to avert irreparable harm and provide judicial review of final agency action.

11 **I. Factual and Procedural Background**

12 **A. Plaintiff’s Lawful F-1 Status and Academic Standing**

13 John Doe is a Chinese national who lawfully entered the United States on an F-1
14 student visa in 2021 and has been pursuing a doctoral program at the University of Washington
15 (“UW”). He has maintained full-time enrollment, made normal progress toward degree
16 completion, and remains academically in good standing. Compl. ¶¶ 7, 20. The University of
17 Washington’s Vice Dean of Research confirms that Doe has finished all required coursework
18 and exams and needs only two to four months of laboratory work to defend his dissertation.
19 Declaration of Shelly Sakiyama-Elbert (“Sakiyama-Elbert Decl.” ¶ 3, Doc. 22). While his F1
20 visa stamp expired in 2022, Plaintiff’s “duration of status” as an F-1 student has continued
21 consistent with the regulatory requirements of 8 C.F.R. § 214.2(f)(5)(i). He was charged for a
22 first-offense DUI misdemeanor in 2023; the charge remains pending and no conviction has

1 been entered. A DUI under Washington law does not meet the definition of a “crime of
 2 violence” under 8 C.F.R. § 214.1(g). *See* Ault Decl.; Wash. Rev. Code §§ 46.61.502(5);
 3 46.61.5055; *see Leocal v. Ashcroft*, 543 U.S. 1, 11-13 (2004) (holding that a Florida DUI was
 4 not a “crime of violence”).

5 B. Termination of SEVIS Record

6 On April 7, 2025, UW officials informed Plaintiff that his SEVIS record had been
 7 unilaterally terminated by Defendants. The sole explanation provided by the Student and
 8 Exchange Visitor Program (“SEVP”), overseen by DHS and ICE, for terminating Plaintiff’s
 9 SEVIS status was: “Otherwise failing to maintain status – individual identified in criminal
 10 records check and/or VISA revoked.” Declaration of Alisa Sweet (“Sweet Decl.”) ¶¶ 17-20,
 11 Doc. 21; Doc. 7-2, Exhibit B. Plaintiff received no opportunity to respond, and there is no
 12 evidence that DHS followed the specific grounds for terminating SEVIS status under 8 C.F.R. §
 13 214.1(d). Declaration of John Doe (“Doe Decl.”), Doc. 7 ¶¶ 8-10. University of Washington
 14 officials first learned of the federal terminations only through their own internal audit and
 15 received no advance notice from SEVP. Sweet Decl. ¶¶ 5-6, 21-22. Seasoned DSO Erin Garcia
 16 states that in fourteen years of advising she has *never* seen the “Other” termination reason and
 17 has “never seen a mass termination . . . where no alert or notification was provided to DSOs”.
 18 Declaration of Erin Garcia (“Garcia Decl.”) ¶¶ 6-8, 10-11, Doc. 23.

19 Furthermore, a contemporaneous USCIS Notice of Intent to Deny issued in a separate
 20 Nebraska I-129 proceeding shows DHS is already treating these April 2025 terminations as
 21 status-ending: “[T]he beneficiary’s SEVIS record . . . their F-1 nonimmigrant status was
 22 terminated on April 10, 2025 because of the criminal records check and the revocation of their

1 F-1 visa. . . . It appears that the beneficiary is not in valid F-1 nonimmigrant status, as such, the
2 request for a change of status may not be approved.” Declaration of Jay Gairson (“Gairson
3 Decl.”) ¶ 3 & Ex. C, Doc. 25-1.

4 The termination of a SEVIS record constitutes final agency action. “For an agency
5 action to be final under the APA, the action must mark the ‘consummation’ of the agency’s
6 decision-making process, and the action must determine a ‘right[] or obligation[.]’” *Jie Fang v.*
7 *Dir. U.S. Immigr. & Customs Enf’t*, 935 F.3d 172, 180 (3d Cir. 2019) (quoting *Bennett v. Spear*,
8 520 U.S. 154, 177-78 (1997)). After analyzing both *Bennett* factors, the court in *Jie Fang*
9 determined, “The order terminating the students’ F-1 visa status was therefore a final order for
10 jurisdictional purposes because there was no further opportunity for review.” *Id.* at 185.

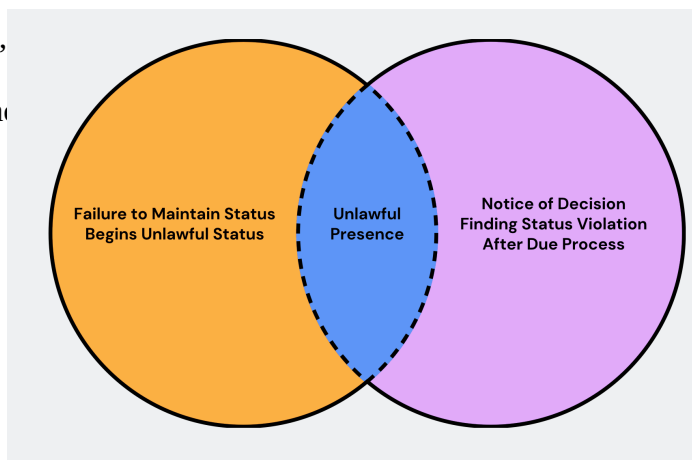
11 Plaintiff’s SEVIS status, also known as F-1 visa status, was unlawfully terminated by the
12 Defendants in the case, similar to the terminations experienced in *Jie Fang*. Therefore, the
13 order terminating Plaintiff’s SEVIS status was a final agency action ripe for review under the
14 APA.

15 As the Defendants’ own regulations did not authorize termination of F-1 status or
16 SEVIS status for an unproven misdemeanor arrest, this Court correctly concluded that
17 Defendants’ action was likely “not in accordance with law” as well as arbitrary and capricious.
18 TRO at 8-13.

C. Status versus Presence:
Clarifying “Unlawful Status” versus “Unlawful Presence”

An F-1 student is in “lawful status” until DHS validly terminates it under 8 C.F.R. § 214.1(d) or the Designated School Official¹ (“DSO”) acts under 8 C.F.R. § 214.2(f). Once terminated, the student immediately is in “unlawful status” (becomes “out of status”), meaning the student loses all privileges of the F-1 status classification. However, under longstanding DHS memoranda and *Guilford Coll. v. McAleenan*, 389 F.Supp. 3d 377 (M.D.N.C. 2019), “unlawful presence” generally does not begin accruing until DHS or an immigration judge formally finds that the student has violated status.

“Unlawful status” arises when a nonimmigrant fails to maintain status, such as overstaying the expiration date on the I-94, having been convicted of a crime of violence, or imprisonment greater than one year. However, unlawful status alone does not immediately trigger the accrual of unlawful presence.



“Unlawful Presence” is a subset of *Figure 1: Unlawful Presence*

unlawful status that begins only when two conditions intersect: first, the nonimmigrant has already failed to maintain status, and second, the government (USCIS or an immigration judge) has provided notice, an opportunity to respond, and notice² of a final decision finding the status

¹ Erin Garcia is a former PDSO who wrote and taught NAFSA’s F-1 advising curriculum and provides a declaration supporting this motion. Garcia Decl. ¶¶ 5-7.

² For nonimmigrant visa categories with an explicit expiration date, unlike students who are present for duration of status (“D/S”), the expiration date on Form I-94 is considered sufficient notice to start the accrual of unlawful presence upon the nonimmigrant’s stay extending beyond the expiration date without seeking other relief.

1 violation occurred. Such notice commonly occurs either when USCIS denies an application for
2 immigration benefits due to unlawful status, or when an immigration judge formally determines
3 that the nonimmigrant violated his status. In both cases, the nonimmigrant is provided with due
4 process, including the opportunity to confront the allegations made by the government. Only
5 after these two conditions overlap does unlawful presence begin to accrue.

6 When an F-1 student is physically present in the United States, the student's status
7 remains lawful so long as they do not violate³ the terms of their status. Once a status violation
8 occurs, the student immediately begins to accrue "unlawful status" and, therefore, placing their
9 student status and the benefits attached thereto at risk of termination, including OPT/CPT
10 employment authorization, the ability to change schools, the ability to continue studying, and
11 others. Even if the students' status violation is not immediately detected, the students' ability to
12 change status, apply for permanent residence or citizenship may be impacted. The University of
13 Washington's Assistant Director of International Student Advising confirms that these benefits
14 cease the moment SEVIS shows a termination. Sweet Decl. ¶¶ 10-12, 33, 37-39. The loss of
15 status is then memorialized in SEVIS by terminating the student's SEVIS record. Typically, it is
16 a DSO that memorializes the failure to maintain status marking the student as terminated in
17 SEVIS. Garcia explains that DSOs are trained to terminate a record only after confirming an
18 actual status violation and, where possible, giving the student notice and an opportunity to cure.
19 Garcia Decl. ¶¶ 8, 12-13. In all cases, once the student's SEVIS status is terminated, the
20 student's ability to claim lawful status based on being an F-1 student present in the U.S. is

21 ³ Status can be terminated for a variety of automatic, administrative reasons, including completion of a degree
22 program, leaving the U.S. for more than five months, change of status, adjustment of status, and other factors.
However, all of these are terminations based on the normal maintenance and management of the SEVIS system
and not due to allegations that the student has somehow failed to maintain status.

extinguished. No viable reinstatement or data-fix option exists for terminations imposed by Defendants under category “Other”. Sweet Decl. ¶¶ 28-33. Garcia further notes that reinstatement petitions are costly, protracted, and categorically unavailable to students on OPT, often leaving them in regulatory limbo or forcing departure. Garcia Decl. ¶¶ 17-19. However, in some circumstances the student may request reinstatement. Should a student’s reinstatement be approved by USCIS, the student is returned to F-1 status *nunc pro tunc*, and any unlawful stay accrued is eliminated.

When USCIS doubts a student’s claim for reinstatement, a request for evidence or notice of intent to deny is sent to the student. 8 C.F.R. § 103.2(b) (8). The student can then provide additional evidence and argument supporting the application for reinstatement. 8 C.F.R. § 103.2(b)(11). A denial of the reinstatement application, or any other petition or application, based on the student being out of status, after an opportunity to respond to the government’s arguments, results in the student immediately beginning to accrue unlawful presence.

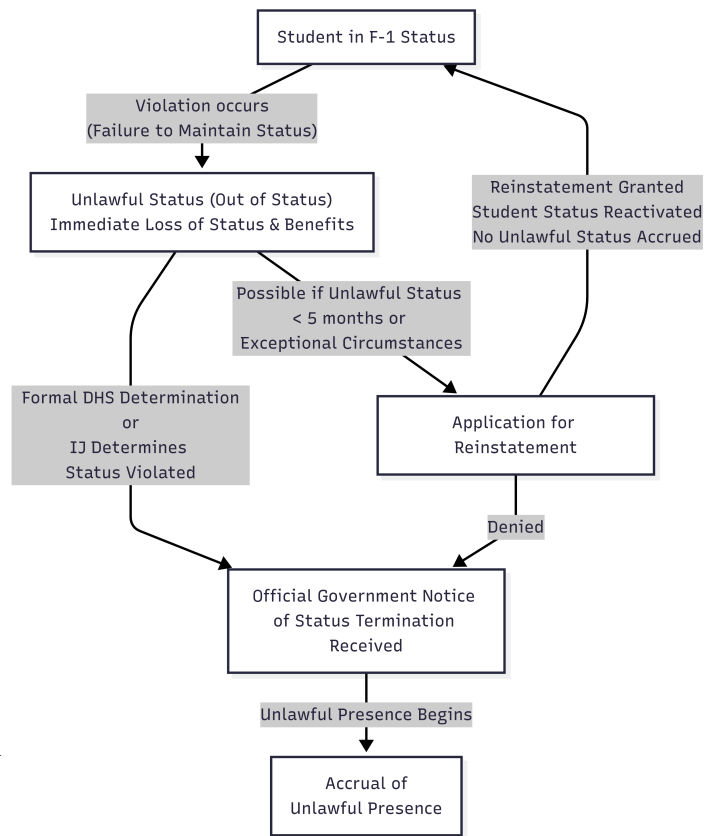


Figure 2: Student Process from Unlawful Status to Unlawful Presence

1 Similarly, if a student does not leave the U.S. and continues to stay out of status, the
2 student becomes deportable unless reinstatement is granted by USCIS. 8 U.S.C. § 1227(a)(1)
3 (C)(i) (“Nonimmigrant status violators”). As a result, under the applicable law, the student
4 could be served with a notice to appear, given due process to pursue his claims, and if found by
5 an immigration judge to be out of status the student would immediately start to accrue unlawful
6 presence.

7 Federal regulations thus carefully distinguish between losing status immediately upon
8 any violation and triggering unlawful presence once DHS or an immigration judge issues
9 formal notice. *See Guilford Coll.*, 389 F. Supp. 3d at 384. Here, Defendants have, contrary to
10 law, placed the cart before the horse by terminating the Plaintiff’s SEVIS status before any
11 determination that a failure to maintain status has occurred; as a result, Plaintiff is automatically
12 considered to be accruing unlawful status, despite his criminal case remaining unproven and the
13 absence of any other grounds for termination. *Id.*

14 D. Temporary Restraining Order

15 On April 17, 2025, this Court granted Plaintiff’s request for a Temporary Restraining
16 Order, enjoining Defendants from enforcing the SEVIS termination, requiring the record be
17 returned to active status, and restraining Defendants from detaining or removing Plaintiff based
18 upon the invalid termination. TRO at pp. 21-22. Specifically, the Court found:

- 19 • Plaintiff is likely to succeed on his APA claim because “the action was unauthorized by
20 8 C.F.R. § 214.1(d) and was arbitrary and capricious.” *Id.* at 8-13.

- 1 • Plaintiff faces irreparable harm, including “the inability to complete his doctoral
2 program, loss of research, loss of research grants, potential deportation, and unlawful
3 presence⁴ bars.” *Id.* at 14-19.
- 4 • “The balance of equities and the public interest strongly favor preserving Plaintiff’s
5 active F-1 status.” *Id.* at 18-20.

6 Plaintiff now seeks a preliminary injunction extending these protections until the final
7 resolution of his underlying APA and constitutional claims.

8 **II. Legal Standard**

9 A party seeking a preliminary injunction must show: (1) a likelihood of success on the
10 merits, (2) a likelihood of irreparable harm, (3) that the balance of hardships tips in the
11 movant’s favor, and (4) that an injunction is in the public interest. *Winter v. NRDC*, 555 U.S. 7,
12 20 (2008). Alternatively, the Ninth Circuit applies a “serious question” approach: if serious
13 questions going to the merits exist and the balance of hardships tips sharply in the movant’s
14 favor, injunctive relief may issue if the remaining *Winter* factors are met. *Alliance for the Wild*
15 *Rockies v. Cottrell*, 632 F.3d 1127, 1131-35 (9th Cir. 2011).

16 Courts in the Ninth Circuit regularly hold that returning the parties to the last
17 uncontested status is prohibitory relief. *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1060-
18 61 (9th Cir. 2014). “Status quo” refers to “the last uncontested status preceding the pending
19 controversy.” *Id.* Here, the “pending controversy” arose only when Defendants terminated

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21 4 While Plaintiff’s SEVIS status has been returned to active by the Defendants, without the TRO and extension of
22 it into a preliminary injunction, subsequent termination would result in him accruing unlawful status again.
Unlawful status carries with it many more immediate harms than unlawful presence, including the inability to
change or adjust status, modify the student program, obtain CPT/OPT employment, continue studying, and
risking being placed in removal proceedings at any time.

1 Plaintiff's SEVIS record, so restoring his record simply preserves the pre-termination status
2 quo.

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4 **III. Argument**

5 A. Plaintiff is Likely to Succeed on the Merits⁵

6 Under the *Accardi* doctrine, agencies must follow their own regulations. *United States*
7 *ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267-68 (1954). Defendants' decision to terminate
8 Plaintiff's SEVIS record due to an interaction with law enforcement that has not resulted in a
9 conviction conflicts with the plain text of 8 C.F.R. § 214.1(d) and is not authorized under 8
10 U.S.C. § 1372; the termination of student status was not authorized by any statute or regulation.
11 In *Guilford Coll. v. McAleenan*, the court similarly set aside a USCIS policy memorandum that
12 improperly changed how unlawful presence accrued for F-1 students that was unsupported by
13 statute or regulation. 389 F. Supp. 3D at 384. Here, likewise, a new or unwritten policy to
14 terminate SEVIS records for unproven minor criminal allegations is arbitrary and capricious,
15 and not in accordance with the law.

16 Furthermore, USCIS's own NOID – although directed to a different student – confirms
17 that the government is uniformly applying the same extra-regulatory grounds to deny benefits,
18 stating that the SEVIS termination means “the beneficiary failed to maintain . . . nonimmigrant
19 status.” Ex. C.

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⁵ The present motion relies on Plaintiff's APA causes of action as those claims are dispositive of the preliminary
injunctive relief requested. Plaintiff's remaining causes of action may be resolved at a later date.

B. Plaintiff Will Suffer Irreparable Harm Absent Continuing Injunctive Relief

As this Court recognized, the harms Plaintiff faces are concrete, imminent, and irreparable: (1) loss of enrollment in his doctoral program; (2) potential loss of grants and professional connections; (3) risk of immediate removal or detention; and (4) unlawful presence accrual potentially triggering multi-year bars to re-entry. *See Ruiz-Diaz v. United States*, No. C07-1881-RSL, 2008 WL 3928016, at *2 (W.D. Wash. Aug. 21, 2008) (enjoining accrual of unlawful presence to prevent irreparable harm). The NOID sample illustrates the real-world, present-tense consequence: DHS is already refusing changes of status to others based solely on the April 2025 mass terminations. Doc. 25-1, Ex. C.

Once Plaintiff's SEVIS record was terminated, he was considered out of status and started to accrue unlawful status. As a result, there was an immediate cessation of all immigration benefits including the following: his ability to attend class and do research at the UW was immediately halted, he was not allowed to enroll in any other classes, he became unable to pursue any opportunity for practical training, he no longer had lawful F-1 student status. Termination also cancels curricular practical training, on-campus assistanships, and OPT/STEM-OPT authorizations, jeopardizing tuition funding and depriving U.S. employers of needed STEM talent. Garcia Decl. ¶¶ 14-16.

Independent interviews of two University of Washington principal investigators confirm that removing a doctoral researcher mid-project can render an entire federally funded study non-viable. Declaration of Deborah Niedermeyer⁶ ("Niedermeyer Decl.") ¶¶ 4-9, 13-17, Doc.

⁶ Niedermeyer, a researcher and former 35-year WSBA attorney, interviewed two University of Washington principal investigators who declined to sign declarations for fear of governmental retaliation. Niedermeyer Decl. ¶¶ 10-12, 18-20. Niedermeyer has also documented and provided highlighted articles supporting the basis for the fear of governmental retaliation and evidence of the government's attack on foreign academics in the U.S..

24. Loss of F-1 status would also derail Doe’s dissertation entirely; he would be forced to restart a new project at another institution, adding three-to-four years to his Ph.D. timeline and postponing his entry-level post-doctoral or industry salary. Sakiyama-Elbert Decl. ¶¶ 4-5. The same disruption ripples outward: faculty report that if even one doctoral or post-doctoral research is forced out, the lab may have to abandon the study altogether, wasting the federal grant and years of accrued data. Niedermeyer Decl. ¶¶ 5-9, 13-7, 21-22. The harm to an advanced doctoral student’s education and career cannot be remedied by monetary relief. Sweet Decl. ¶¶ 10-11, 35-38; Sakiyama-Elbert Decl. ¶¶ 4-6; *Tully v. Orr*, 608 F. Supp. 1222, 1225-26 (E.D.N.Y. 1985) (disenrolling a cadet from the United States Air Force Academy “just prior to his examinations and graduation” would be an irreparable harm where the candidate would face the prospect of having to repeat courses, delay his graduation, and have a deleterious effect on his future). Nor can the lost taxpayer investment in the abandoned project be recouped. Niedermeyer Decl. ¶ 9.

In the normal management of SEVIS, a student is marked terminated only when he has failed to maintain status. Here, Defendants terminated Plaintiff’s status without any examination of the facts underlying Plaintiff’s law enforcement encounter. Sweet Decl. ¶¶ 25-27, 40-42.

C. Balance of Equities Tips Sharply in Plaintiff’s Favor

As this Court has already found, maintaining the pre-termination status quo imposes no significant burden on Defendants, who can still investigate or take lawful actions if valid grounds for termination arise. *See Ruiz-Diaz*, No. C07-1881-RSL, at *2. Meanwhile, Plaintiff

Id. at ¶ 22.

1 faces life-altering consequences if he is stripped of his student status pending final resolution.
2 Similarly, the public interest is harmed, because the University of Washington likewise suffers
3 program-wide harm from the loss of graduate assistants and interruption of federally funded
4 research. Sweet Dec. ¶¶ 35-38. Garcia details how sudden terminations sever employer
5 relationships, undermine sponsored research, and strain university-industry pipelines
6 nationwide. Garcia Decl. ¶¶ 14-16. Niedermeyer further documents faculty fears that publicly
7 opposing these terminations will trigger retaliatory funding cuts, compounding the threat to
8 U.S. research leadership. Niedermeyer Decl. ¶¶ 18-22. These sworn accounts underscore the
9 systemic, nationwide stakes that extend well beyond Doe's individual plight.

10 Doe's forced departure would leave his mentor's laboratory without a trained senior
11 researcher, delaying critical biomedical experiments while a replacement is recruited and
12 trained. Sakiyama-Elbert Decl. ¶ 6. Here, the public interest also strongly favors the Plaintiff
13 because the public interest is served by ensuring the government adheres to lawful procedures
14 and regulations. *Nken v. Holder*, 556 U.S. 418, 435 (2009). This cascading delay to grant
15 funded health-research projects underscores the public's stake in preventing the unlawful
16 termination. Sakiyama-Elbert Decl. ¶ 6.

17 D. The Requested Relief is Prohibitory, Not Mandatory

18 The last relevant uncontested state of affairs was Plaintiff's active SEVIS, immediately
19 prior to Defendants' unlawful termination of his status. The Ninth Circuit consistently
20 recognizes that the relevant status quo is the last uncontested state of affairs. *Ariz. Dream Act*
21 *Coalition*, 757 F.3d at 1060-61. Plaintiff's record was active on April 6, 2025, and only changed
22 to terminated on April 7; this was without a lawful reason. Restoring Plaintiff's SEVIS status to

1 active and keeping it active simply preserves the pre-controversy state of affairs. Thus, the
2 relief sought remains prohibitory in nature.

3 **IV. Conclusion**

4 For the foregoing reasons, Plaintiff respectfully requests that the Court convert its April
5 17, 2025, TRO (Doc. 16) into a Preliminary Injunction, ordering Defendants to preserve and
6 maintain his F-1 SEVIS record in active status and enjoining any detention or removal arising
7 from the April 7, 2025 termination.

8 Finally, Defendants face no cognizable pecuniary harm from an injunction that merely
9 maintains the pre-termination status quo. As a result, Plaintiff respectfully requests that the
10 Court exercise its discretion to waive any bond requirement or, in the alternative, set a nominal
11 bond not exceeding \$100. Fed. R. Civ. P. 65(c); *see Barahona-Gomez v. Reno*, 167 F.3d 1228,
12 1237 (9th Cir. 1999) (determining nominal bond to not be an abuse of discretion); *Cal. ex rel.*
13 *Van De Kamp v. Tahoe Reg'l Plan. Agency*, 766 F.2d 1319, 1325 (9th Cir. 1985) (finding proper
14 the district court's exercise of discretion in allowing an environmental group to proceed without
15 posting bond).

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17 Respectfully submitted this 23rd Day of April 2025,
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/s/ Devin T. Theriot-Orr

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Certificate of Service

I certify that on April 23, 2025, I electronically filed the foregoing document, together with all attachments, with the Clerk of the Court for the Western District of Washington using the CM/ECF system.

/s/ Jay Gairson

Jay Gairson, WSBA 43365